

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

DOCKET NO.

NORTH CAROLINA DEMOCRATIC
PARTY, DSCC a/k/a DEMOCRATIC
SENATORIAL CAMPAIGN COMMITTEE,
AND DCCC a/k/a DEMOCRATIC
CONGRESSIONAL CAMPAIGN
COMMITTEE,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; AND DAMON CIRCOSTA, in
his official capacity as CHAIR OF THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendants.

COMPLAINT

**(Three-Judge Court Requested
Pursuant to N.C. Gen. Stat. § 1-
81.1(a1))**

Plaintiffs, complaining of Defendants, say and allege:

INTRODUCTION

1. In the last three presidential elections, more than half of North Carolina's ballots were cast during one-stop absentee voting ("early voting"). Early voting provides access and flexibility for voters whose work schedules, family care responsibilities, or lack of reliable transportation make Election Day voting difficult or even impossible. Although early voting is popular with voters across the state and from all backgrounds, certain groups of voters have embraced early voting with enthusiasm. African American North Carolinians in particular have cast their ballots during early voting at a higher rate than White North Carolinians. The same has generally held true for voters who are registered Democrats, as compared to non-Democrats.

When these trends became apparent, Republican members of the North Carolina General Assembly repeatedly set their sights on reducing and restricting early voting opportunities for North Carolinians, targeting voters whom they perceive to hold unfavorable political views.

2. Federal courts have already rejected the General Assembly's most brazen attempt to restrict access to the franchise through limitations on early voting. In 2013, the General Assembly passed HB 589—an omnibus bill that targeted and rolled back voting reforms that most heavily affected African Americans. Following several legal challenges, a federal court of appeals (in 2016) found that the legislature enacted the law with discriminatory intent in violation of the U.S. Constitution and the Voting Rights Act. *See N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 219 (4th Cir. 2016).

3. Undeterred, the General Assembly's Republicans—whose legislative supermajority was entrenched though a partisan gerrymander eventually ruled unconstitutional by a panel of this Court—sought to achieve the same end through the surprise unveiling and rushed passage of Senate Bill 325 (“SB 325”) in 2018. Their efforts were so stealthy, in fact, that Republican legislators did not even consult with, let alone obtain the support of, the very county elections boards whose interests the bill's sponsors claimed to champion. Under the guise of “uniformity,” SB 325: (1) outlawed early voting during the weekend before Election Day, even though the last Saturday of early voting (“Last Saturday”) was far and away the most popular day among voters to cast an early ballot; and (2) made it more expensive for counties to operate early voting sites by imposing costly and rigid “uniformity” mandates on early voting hours and locations.

4. The General Assembly's ban on Last Saturday early voting was so disruptive and unpopular that they backtracked almost immediately, passing a stopgap bill that delayed the

ban's effect until after the 2018 midterm election. Unsurprisingly, Last Saturday was the busiest day of early voting in 2018. The 2020 general election will be the first under SB 325's Last Saturday ban.

5. The General Assembly's uniformity mandate, however, was in place during the 2018 midterm elections, with predictable results. Many North Carolina county boards of elections reduced the number of early voting sites or the number of weekend early voting dates, and in some counties, boards reduced both sites and dates. This pattern is likely to repeat itself for the 2020 general election.

6. North Carolina courts have long recognized that the purpose of elections is "to ascertain, fairly and truthfully, the will of the people." *Wilmington, O. & E.C.R. Co. v. Onslow Cty. Comm'rs*, 21 S.E. 205, 207 (N.C. 1895). To that end, the tools that North Carolina uses to administer elections "should not be used to defeat the object which they were intended to aid." *Id.* North Carolina's Constitution secures the rights of North Carolina voters to participate in the political process, and these rights include Free Elections, Equal Protection, Freedom of Speech, and Freedom of Assembly.

7. SB 325 unconstitutionally burdens North Carolinians' right to vote, and none of the General Assembly's pretextual justifications present interests sufficiently weighty to uphold the law. SB 325 also has the purpose and effect of making it more difficult for Democratic-affiliated voters, a group disfavored by General Assembly Republicans, to express their political will at the ballot box, and thus constitutes improper partisan retaliation against voters on the basis of their political affiliation. By limiting and restricting early voting opportunities and thereby disrupting the reasonable and settled expectations of North Carolina voters who have come to rely on early voting over the past two decades, SB 325 denies voters the rights

guaranteed to them by the North Carolina constitution. For these reasons and those stated below, this Court should enjoin SB 325 as unconstitutional and order that North Carolina return to the early voting procedures that were in place before its passage.

PARTIES

8. The North Carolina Democratic Party (“NCDP”) brings this action on its own behalf and on behalf of its members who are registered voters in North Carolina and have voted or intend to vote using early voting. The NCDP is a political party as defined in N.C. Gen. Stat. § 163-96. Its purposes are: (i) to bring people together to develop public policies and positions favorable to NCDP members and the public generally, (ii) to identify candidates who will support and defend those policies and positions, and (iii) to persuade voters to cast their ballots for those candidates. The NCDP has members in every county in North Carolina. SB 325 makes it more difficult for NCDP members who use early voting to cast their ballots. SB 325 discriminates against the NCDP’s members because of their past votes, their political views, and their party affiliations. SB 325 also discriminates against the NCDP itself on the basis of its viewpoints and affiliations, and SB 325 frustrates and burdens NCDP’s ability to achieve its essential purposes and to carry out its core functions, including registering voters, attracting volunteers, raising money, campaigning, turning out the vote, and ultimately electing candidates who will pursue policies favorable to NCDP members and the public generally in the North Carolina General Assembly. The NCDP must expend additional funds and other resources than it would otherwise to combat the effects of SB 325.

9. Plaintiff DSCC is the national senatorial committee of the Democratic Party, as defined by 52 U.S.C. § 30101(14), and its mission is to elect candidates of the Democratic Party to the United States Senate, including in North Carolina. DSCC works to accomplish its mission across the country and in North Carolina by, among other things, making expenditures for, and

contributions to, Democratic candidates for U.S. Senate and assisting state parties throughout the country, including in North Carolina. In 2016 (the last time there was a U.S. Senate election in North Carolina) DSCC spent in excess of \$13 million to support the election of the Democratic Senate candidate and the defeat of the Republican Senate candidate in North Carolina. DSCC again expects to make substantial contributions and expenditures to support the Democratic candidate for U.S. Senate in North Carolina in the 2020 election, as it has done in past elections. SB 325's restrictions on early voting directly harm DSCC by eliminating prior voting opportunities upon which Democratic voters relied (i.e., the last Saturday before Election Day) and by imposing mandatory uniformity requirements that make it harder for counties to offer early voting hours to communities that rely on it the most, which, in turn, makes it more difficult for Democratic voters to participate in the political process and frustrates DSCC's mission of, and efforts in, electing the Democratic Party candidate in North Carolina to the U.S. Senate. DSCC will also have to expend and divert additional funds and resources, at the expense of its efforts in North Carolina and in other states, in order to combat the effects of SB 325 and the resulting reduction or elimination of early voting opportunities in future elections for U.S. Senate in North Carolina.

10. Plaintiff DCCC is the national congressional committee of the Democratic Party, as defined by 52 U.S.C. § 30101(14). DCCC's mission is to elect Democratic candidates to the U.S. House of Representatives from congressional districts across the United States, including from North Carolina's 13 congressional districts. DCCC works to accomplish its mission across the country and in North Carolina by, among other things, making expenditures for, and contributions to, Democratic candidates for U.S. Congress and assisting state parties throughout the country, including in North Carolina. Already this year, the DCCC has spent in excess of

\$1.2 million to support the election of Democratic congressional candidates and the defeat of Republican congressional candidates in North Carolina. For the 2020 election, DCCC has identified several congressional districts in North Carolina as targeted races in which it will expend significant resources to support the Democratic candidate, and plans to make contributions and expenditures to persuade and mobilize voters to support Democratic candidates in congressional elections around the country as well. SB 325's restrictions on early voting directly harm DCCC by eliminating prior voting opportunities upon which Democratic voters relied (i.e. the last Saturday before Election Day) and by imposing mandatory uniformity requirements that make it harder for counties to offer early voting hours to communities that rely on it the most, which, in turn, makes it more difficult for Democratic voters to participate in the political process and frustrates DCCC's mission of, and efforts in, electing Democratic Party candidates in North Carolina to the U.S. House of Representatives. DCCC will have to expend and divert additional funds and resources, at the expense of its efforts in these districts as well as in other states, in order to combat the effects of SB 325 and the resulting reduction or elimination of early voting opportunities in future elections.

11. Defendant the State of North Carolina has its capital in Raleigh, North Carolina.

12. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina.

13. Defendant Damon Circosta is the Chair of the North Carolina State Board of Elections. Mr. Circosta is sued in his official capacity.

JURISDICTION AND VENUE

14. This Court has jurisdiction of this action pursuant to Article 26 of Chapter 1 of the General Statutes.

15. Under N.C. Gen. Stat. § 1-81.1(a1), the exclusive venue for this action is the Wake County Superior Court.

16. Pursuant to N.C. Gen Stat. Ann. § 1-81.1(a1), a three-judge panel must be convened because this action involves a determination as to the facial validity of an act of the General Assembly.

FACTUAL ALLEGATIONS

A. North Carolina Adopted Voting Reforms That Increased Voter Participation.

17. In 1996, North Carolina ranked near last in the country (43rd out of 50 states) in voter participation. Over the following decade, the North Carolina General Assembly took steps to ensure that eligible voters would have sufficient opportunities to cast ballots in elections. These measures furthered representative democracy in the state by increasing voter participation and expanding the number and diversity of voices and viewpoints expressed through the act of voting.

18. In 1999, the North Carolina General Assembly established “no-excuse” early voting in even-year general elections and authorized county boards of elections to establish early voting sites. S.L. 1999-455 (S.B. 568). When this law was implemented, county boards of elections had the discretion to select the placement and times of operation of early voting sites. *Id.* (allowing for selection of early voting sites based on unanimous vote of county board of elections and approval by the State Board of Elections).

19. In 2001, the North Carolina General Assembly expanded early voting to all elections, S.L. 2001-337, and subsequently passed legislation in 2007 that allowed individuals to register and vote all at once at an early voting location. S.L. 2007-253.

20. In the first election with no-excuse early voting (in 2000), more than 390,000 citizens cast their ballots during the early voting period. This figure represented 12.4% of the

voters who cast ballots in that election. In the 2008 election, more than 50% of North Carolina voters cast their ballots using in-person early voting. The percentage of individuals who utilized early voting in the 2012 general election remained above 50%, with the total number of North Carolina citizens who voted early surpassing 2.5 million.

21. As a result of these measures to increase access to the ballot box, North Carolina jumped to 11th in the nation in voter participation in 2012.

B. The General Assembly’s Unsuccessful Attempts to Restrict Early Voting.

22. Even as early voting grew in popularity with voters across the state, there emerged clear trends regarding the groups of voters for whom early voting was most essential. In the 2000 general election—the first North Carolina general election with early voting—around 30,000 more registered Democrats cast their ballots using this method than registered Republican voters. In the 2012 general election, this number grew to about 50,000. In 2008 and 2012, African American voters in North Carolina used early voting at a higher rate than White voters. Rather than embrace the role that early voting played in expanding voter participation in North Carolina’s elections, General Assembly Republicans attempted to make early voting—the most popular form of voting in presidential election years—less accessible.

23. In 2011 alone, Republican members introduced several bills “to reduce early voting.” *N. Carolina State Conference of the NAACP v. McCrory*, 182 F. Supp. 3d 320, 337 (M.D.N.C.), *rev’d and remanded on other grounds sub nom. N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (*citing* H.B. 658, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011); S.B. 714, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011); S.B. 657, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011); S.B. 47, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011); S.B. 657, 2011 Gen. Assemb., Reg. Sess. (N.C. 2011)). None became law, but they established the beginning of a concerted partisan effort to make it more difficult for North Carolinians to vote.

24. In 2013, several additional bills were introduced for the same purpose. *Id.* (citing North Carolina Session Law 2013-381; H.B. 913, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013); S.B. 428, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013); S.B. 666, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013); S.B. 721, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013); H.B. 451, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013)).

25. One of those bills, HB 589, was signed into law on August 12, 2013. Among other restrictions, HB 589 reduced the number of available early voting days from 17 to 10. Upon several legal challenges to HB 589’s sweeping restrictions on the voting process, including the reduction of early voting days, the United States Court of Appeals for the Fourth Circuit held that the challenged provisions were enacted “with racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment [of the United States Constitution].” *N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 219 (4th Cir. 2016). Of note, the Fourth Circuit’s opinion emphasized that legislators received data when drafting the bill showing that African American voters utilized early voting at a higher rate than White voters. *See id.* at 230 (finding it “worthy of discussion” that the General Assembly “requested and received a breakdown by race” for voting practices including early voting and restricted “all—and only—practices disproportionately used by African Americans.”).

C. As North Carolinians Increasingly Rely on Early Voting, General Assembly Republicans Attempt to Make Early Voting More Difficult.

26. The Fourth Circuit ruling (and the subsequent district court injunction) restored all 17 days of early voting for the 2016 presidential election. During that election, county boards largely retained their traditional discretion to determine how many early voting election sites to open, which days to open them, and what their hours of operation would be. Troublingly, then-chair of the North Carolina Republican Party, Dallas Woodhouse, encouraged the Republican

chairs of the county boards of elections to “make party[-]line changes to early voting.” These party-line changes included restricting hours, eliminating early voting sites that were convenient to students, and closing early voting sites on Sundays—an important day for predominantly African American churches that spearheaded “souls to the polls” campaigns to encourage voter participation and in some cases transported African Americans to polling places in order to vote after Sunday service.

27. Fortunately, most county boards failed to adopt Woodhouse’s recommendations, and in 2016, early voting was again the most popular form of voting among North Carolinians, with over 60% of voters electing to cast their ballots during one of the 17 early voting days. Suffice it to say, North Carolina’s voters have expressed a clear preference for early voting.

28. Yet, in spite of increasing numbers of North Carolinians who rely on early voting, the General Assembly Republican’s sustained attack continued; instead of slashing the total number of early voting days, General Assembly Republicans crafted a bill to achieve the same ends indirectly.

29. Introduced in March 2017, SB 325 initially had nothing to do with early voting. But late in the evening on June 14, 2018, a House subcommittee substituted the bill’s initial language with the deceptively-titled “Uniform & Expanded Early Voting Act.” In less than 48 hours, this bill sailed through both chambers of the General Assembly along purely partisan lines— not a single Democratic legislator voted in favor of the final bill—with limited debate and almost no meaningful public input. Governor Roy Cooper vetoed the bill, stating simply that “[p]revious attempts like this by the legislature to discriminate and manipulate the voting process have been struck down by the courts. True democracy should make it easier for people to vote,

not harder.” On June 27, 2018, the General Assembly passed SB 325 over Governor Cooper’s veto, again along purely partisan lines.

30. But even the General Assembly Republicans realized after the fact that they went too far. On June 28, 2018—one day after the General Assembly overrode the veto of SB 325—a Senate subcommittee substituted language to restore mandatory Last Saturday voting for the 2018 election into a bill that had initially addressed judicial appointments (“HB 335”). Representative David Lewis, who had been the primary spokesperson in support of SB 325, was also the primary spokesperson for HB 335. When he introduced the bill, Lewis said, “The last Saturday is important. That was made clear during the debate and in subsequent research that I’ve done. So I worked with our colleagues in the Senate to restore that day.” Lewis tellingly omitted from this statement that HB 335 restored the last Saturday of early voting only for the 2018 election.

D. SB 325 Makes Early Voting More Difficult.

31. Despite its name, SB 325 did nothing to meaningfully expand early voting. Although the bill regulates various aspects of the early voting process, it does not mandate any additional early voting hours or sites beyond those provided at county board of elections offices during the 17-day early voting period. In fact, one of the most glaring features of SB 325 is the elimination of the Saturday immediately preceding Election Day—Last Saturday—from the early voting period.

32. North Carolina’s early voters—especially those in rural communities, African-Americans, Latinos, and young voters—have historically utilized Last Saturday at high rates. African American voters in particular have disproportionately relied on Last Saturday voting:

Election Year	Percentage of African American Voters in the	Percentage of African American Last Saturday
---------------	--	--

	General Election	Voters
2018	20.1%	26.9%
2016	20.7%	28.9%
2014	21.4%	30.0%
2012	23.1%	32.3%
2010	20.0%	28.5%

(Data from Sunny Frothingham, *Greater Costs, Fewer Options: The Impact of the Early Voting Uniform Hours Requirement in the 2018 Election*).

33. This was evident in the 2018 general election. There, more than 135,000 North Carolinians voted on Last Saturday, amounting to 6.9% of all early votes cast in 2018, even though early voting was only open in the morning in most counties. For African American voters, that number jumped to 8.4%, and for voters between the ages of 18 and 25, that number was 11.9%. On an hour-by-hour basis, Last Saturday saw more than double the voters per hour than early voting on weekdays, and significantly more votes per hour than other weekend early voting days.

34. In addition, SB 325's uniformity provisions make it more expensive and inefficient for county boards of elections to expand or even maintain existing early voting opportunities by effectively stripping county boards of their discretion in determining when early voting sites should be open.

35. Before SB 325, county boards of election were obligated to offer a minimum total number of early voting hours, but had broader discretion to open early voting satellite sites on the days and hours of their choosing based on the needs of the voters in their communities. This

allowed county boards to maximize their resources by offering early voting in a targeted, efficient manner that accounted for local needs and the boards' knowledge of local patterns of voting in past elections—all of which SB 325 now forbids.

36. Instead, county boards are now required to follow a wasteful, one-size-fits-all mandate: if any one-stop early voting site is open on a weekday, all sites must be open from 7 a.m. to 7 p.m. on that weekday. This requires county boards to keep open early voting sites even during hours when few people tend to vote. Because SB 325 does not include any extra funding for this mandate, it has forced many counties to reduce the overall number of early voting sites in order to meet SB 325's uniformity requirement.

37. Similarly, SB 325 provides that if a county board of elections opens any early voting site on a weekend day, it must open all early voting sites in the county for the same number of hours on that day. Again, this places a burden on county boards of elections that can no longer take local needs into account in setting weekend hours, and instead must adopt an all-or-nothing approach that makes it more costly to offer any weekend voting.

38. Finally, after imposing these unfunded costs, SB 325 abolishes any requirement that county boards of elections provide any weekend early voting dates. Before SB 325 was enacted, county boards were required at a minimum to provide early voting on the Last Saturday. But now counties are not required to offer any weekend early voting, and, to make matters worse, SB 325's uniformity requirement discourages them from doing so.

39. In the 2018 election, SB 325 contributed significantly to the reduction in the number of early voting sites offered in 43 of North Carolina's 100 counties, when compared to the previous mid-term election in 2014. In addition, 47 of North Carolina's 100 counties offered fewer weekend early voting days as compared to the 2014 election, and 65 counties offered

fewer weekend voting hours, despite the fact that North Carolina law in 2014 permitted only 10 total days of early voting (compared to 17 in 2018).¹ And even the counties that did not reduce early voting sites or hours were forced to absorb higher costs, which could impede any efforts to expand early voting to accommodate a higher turnout election.

40. In sum, SB 325 has made and will continue make it more difficult for North Carolinians to cast their ballots during the early voting period.²

E. The General Assembly’s Justification for SB 325 is Pretextual and In Any Event Insufficient to Justify SB 325’s Restrictions on Early Voting.

41. The sponsors of SB 325 identified two justifications for the bill: (1) it would provide the people of North Carolina with “uniformity” regarding when and where they could early vote; and (2) eliminating the Last Saturday of early voting would allow poll workers to “prepare the books” for Election Day. Neither of these justifications have any merit, as they set out to solve problems that do not exist or can be resolved through less burdensome means.

42. The General Assembly Republicans that introduced and supported SB 325 largely failed to consult the North Carolina State Board of Elections or any of the county boards—the entities responsible for administering the elections in North Carolina’s 100 counties—before introducing and passing SB 325 in less than 48 hours. SB 325’s passage led to a bipartisan outcry

¹ Although the Fourth Circuit ultimately held that the reduction of early voting days was unlawful, it declined to issue a preliminary injunction to restore the seven early voting days before the 2014 general election because the proximity of the challenge to the election date presented a “significant risk of a substantial burden to the State.” *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014).

² The detrimental effects of SB 325 on weekend early voting are likely understated in the 2018 election because the legislature passed a bill, HB 335, to temporarily undo the elimination of Last Saturday. Last Saturday was the only weekend date provided in more than 50% of North Carolina’s counties, and without a requirement that counties provide early voting on a weekend date, it is possible that many counties will not offer any weekend early voting at all under SB 325.

from members of various county boards because of the detrimental impact that it had on their ability to effectively and efficiently administer early voting.³

43. The characteristics, demographics, and geography of North Carolina's 100 counties vary widely, and county boards have the expertise necessary to set the dates and times of early voting that meet the needs of their respective counties. This is especially true in rural counties where voters may have to travel a great distance to their county board of elections office, and the ability to set early voting locations and times that best serve the community is essential in ensuring that early voting is accessible to all residents.

44. Similarly, there is no credible evidence that Last Saturday early voting interferes with North Carolina's election officials' preparation for Election Day in any significant way. To the contrary, North Carolina's election officials have repeatedly demonstrated their ability to facilitate both Election Day and Last Saturday early voting in each of the past 11 general elections. The pretextual nature of the General Assembly Republicans' justifications is underscored by the fact that they immediately passed a bill, HB 335, to temporarily "restore early one-stop voting on the last Saturday before the 2018 election."

³ E.g., Blake Peterson, *Bipartisan Furor as North Carolina Election Law Shrinks Early Voting Locations by Almost 20 Percent*, PROPUBLICA (Sep. 24, 2018, 5:00 AM), <https://www.propublica.org/article/bipartisan-furor-as-north-carolina-election-law-shrinks-early-voting-locations-by-almost-20-percent>; Alexandra Olgin, *Early Voting Changes In North Carolina Spark Bipartisan Controversy*, NPR (Oct. 17, 2018, 5:01 AM), <https://www.npr.org/2018/10/17/657928248/early-voting-changes-in-north-carolina-spark-bipartisan-controversy>.

CAUSES OF ACTION

COUNT I

Violation of the North Carolina Constitution Equal Protection, Art. I, § 19, Freedom of Speech, Art. I, § 14, and Freedom of Assembly, Art. I, § 12 (Unconstitutional Burden on Fundamental Rights)

45. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

46. Article I, § 12 of the North Carolina Constitution provides in relevant part: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances.”

47. Article I, § 14 of the North Carolina Constitution provides in relevant part: “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained.”

48. Article I, §§ 12 and 14 protect the right of voters to participate in the political process, to express political views, to affiliate with or support a political party, and to cast a vote. North Carolina courts have recognized that Article I, §§ 12 and 14 may afford broader protections than the federal First Amendment. *Evans v. Cowan*, 468 S.E.2d 575, 578, *aff’d*, 477 S.E.2d 926 (N.C. 1996).

49. Article I, § 19 of the North Carolina Constitution provides in relevant part that “[n]o person shall be denied the equal protection of the laws.”

50. Early voting provides increased access to the ballot box especially for voters whose work schedules, family care responsibilities, or lack of transportation make Election Day voting difficult and at times impossible.

51. Similarly, those same factors—i.e., work schedules, family care responsibilities, and lack of transportation—can make weekday early voting difficult or impossible for some voters as well.

52. By eliminating early voting entirely during the weekend before an election and making it more expensive for counties to operate early voting sites, the General Assembly Republicans, through SB 325, sought to reduce access to early voting opportunities on which these voters have come to depend, thereby burdening their fundamental right to vote.

53. These burdens are severe, and SB 325 is not narrowly tailored to advance a compelling state interest.

54. But even if the burdens were not severe, the State's purported interests are not sufficiently weighty to justify SB 325's restrictions on what has become the favored method of casting a ballot in presidential elections in North Carolina, and an increasingly popular method of voting in non-presidential elections.

COUNT II
Violation of the North Carolina Constitution's
Free Elections Clause, Art. I, § 10

55. Plaintiffs hereby incorporate all other paragraphs in this Complaint as if fully set forth herein.

56. Article I, § 10 of the North Carolina constitution states, in its entirety, that "[a]ll elections shall be free."

57. The rights that appear in Article I of the North Carolina Constitution are sacrosanct:

The civil rights guaranteed by the Declaration of Rights in Article I of our Constitution are individual and personal rights entitled to protection against state action The Declaration of Rights was passed by the Constitutional Convention on 17 December 1776, the day before the Constitution itself was adopted, manifesting the primacy of the Declaration in the minds of the framers. The fundamental purpose for its adoption was to provide citizens with protection from the State's encroachment upon these rights. Encroachment by the State is, of course, accomplished by the acts of individuals who are clothed with the authority of the State. The very purpose of the Declaration of Rights is to ensure that the

violation of these rights is never permitted by anyone who might be invested under the Constitution with the powers of the State.

Corum v. Univ. of N. Carolina Through Bd. of Governors, 413 S.E.2d 276, 289–90 (N.C. 1992).

58. “The object of all elections is to ascertain, fairly and truthfully, the will of the people—the qualified voters.” *Hill v. Skinner*, 169 N.C. 405, 86 S.E. 351 (1915). “Our government is founded on the will of the people. Their will is expressed by the ballot.” *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 220 (1875). “[F]air and honest elections are to prevail in this state.” *McDonald v. Morrow*, 119 N.C. 666, 673, 26 S.E. 132, 134 (1896).

59. SB 325 obfuscates the will of North Carolinians because its curtailing of early voting effectively silences entire groups of voters or makes it harder for them to participate in the political process. SB 325 also has the purpose or effect of making it more difficult for Democratic-affiliated voters, a group disfavored by General Assembly Republicans, to express their political will at the ballot box. By limiting the method of voting relied upon by certain groups (e.g., Democratic voters, African Americans, young voters) the General Assembly Republicans placed their thumb on the scale of the voting process in favor of Republican candidates and causes. Not unlike partisan gerrymandering, the representatives are attempting to entrench themselves rather than submit to the will of the people.

60. This represents an abuse of power that serves the self-interest of political parties at the expense of the public good.

61. Because SB 325 has the purpose of silencing groups of voters or making it harder for them to have their voices heard in the political process, it works to prevent elections from ascertaining the true will of the people, and it therefore violates the Free Elections Clause.

Count III
Violation of the North Carolina Constitution's
Freedom of Speech Clause (Retaliation), Art. I, § 14

62. Plaintiffs hereby incorporate all other paragraphs in this Complaint as if fully set forth herein.

63. Article I, § 14 of the North Carolina Constitution provides that “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.” The North Carolina Supreme Court has taken this admonishment to heart in protecting the freedom of speech.

64. North Carolina’s “appellate courts have held that the free speech protections contained in the federal and North Carolina constitutions are ‘parallel and has addressed them as if their protections were equivalent.’” *State v. Shackelford*, 825 S.E.2d 689, 696 (N.C. Ct. App. 2019) (*quoting State v. Petersilie*, 432 S.E.2d 832, 841 (N.C. 1993)).

65. North Carolina voters engaged in core protected speech by casting their ballots during the early voting period, including the Last Saturday eliminated by SB 325. Republican members of the General Assembly disapproved of that speech and retaliated against the Plaintiffs and Democratic voters by passing SB 325 to make it more difficult for them to vote and have their voices heard in the political process. There is a clear causal connection between Democratic voters’ protected speech and the General Assembly’s enactment of the restrictions and limitations on early voting set forth in SB 325. *See Blankenship v. Manchin*, 410 F. Supp. 2d 483, 489–90 (S.D. W. Va.), *aff’d*, 471 F.3d 523 (4th Cir. 2006) (outlining the elements of a First Amendment retaliation claim: (1) protected speech, (2) action adversely affected constitutionally protected speech; and (3) a causal relationship between speech and action).

66. By retaliating against individuals who exercise their rights under Article I, § 14, SB 325 violates the North Carolina Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants, and:

- a. Enter a declaratory judgment pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, that SB 325 is unconstitutional and invalid because it violates the rights of Plaintiffs and North Carolina voters under the North Carolina Constitution's Equal Protection and Law of the Land Clauses, Art. I, § 19; Free Elections Clause, Art. I, § 10; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14.
- b. Enter an order preliminarily and permanently enjoining SB 325 pursuant to North Carolina Rule of Civil procedure 65;
- c. Award to Plaintiffs their costs and expenses, pursuant to applicable statutory and common law, including N.C. Gen. Stat. §§ 6-20 and 1-263; and
- d. Grant Plaintiffs such other and further relief as the Court deems necessary.

Dated: October 28, 2019

Marc E. Elias*
Uzoma N. Nkwonta*
Alexander G. Tischenko*
Christopher J. Bryant*
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

Attorneys for Plaintiffs

*Seeking Pro Hac Vice Admission

Respectfully submitted,

By: 

Burton Craige, NC Bar No. 9180
Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
(919) 942-5200
bcraige@pathlaw.com
nghosh@pathlaw.com
psmith@pathlaw.com

Attorneys for Plaintiffs